

LAKE COUNTY PLANNING BOARD
May 8, 2019
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, John Fleming, Sigurd Jensen, Frank Mutch, Abigail Feiler, David Passieri

STAFF PRESENT: Jacob Feistner, Lita Fonda; Wally Congdon

Steve Rosso called the meeting to order at 7:02 pm. He commented that public notice that met state law didn't necessarily meet the information norms of today. Tonight the Board would accept public comment, and leave the record open and continue discussions in the future on these two zoning districts.

Wally Congdon talked about the provision for protesting zoning that was struck down in 2013. It wasn't fixed yet. He called the Attorney General's office today about that. He thought it would take them a couple of weeks at least to sort out their thoughts on that. Tonight, the Board would take as much public comment as possible but leave the hearings open. They'd take more comment at the next meeting or people could write in the meanwhile, and then make some recommendations to the Commissioners. He read the language about striking the provision in 2013 as an unconstitutional delegation of power. (See attachments to minutes in the May 2019 meeting file for handout.)

LAKE MARY RONAN ZONING MAP & REGULATIONS AMENDMENTS (7:06 pm)

Steve Rosso summarized subjects being dealt with under the review of the zoning district regulations. They needed to follow the implementation steps in the new growth policy. He asked speakers to say if they knew whether or not they were in the zoning district. Plum Creek originally owned the land which was now in the zoning district.

Jim Grant and his wife lived in the zoning district. He complimented most of the additions. His concern was the proposal to allow disturbance of slopes of greater than 25% with a conditional use. He and his wife had been involved with the quality of water in the lake and testing the water since 2011. He talked about this, using handouts (no copy received for the file) that included bar graphs about pollutants and comparison of Swan Lake and Flathead Lake, and comparisons of chemistry. A eutrophic lake was darker in color with a high algae content, and fish and other aquatic life began to die. Lake Mary Ronan was classified as mesotrophic and had gone into eutrophic already. [After] over more than 40 years of fishing on the lake, he'd seen the deterioration of fish the last couple of years. Fish & Game was concerned. In a lot of months of the year, no oxygen was present below 20 feet. He talked about the algae. Some improvement had happened, with septic replacements and logging for defensible space. He hoped for further improvement, and shared more handouts (no copy received for the file). A lot of money was being spent to clean up the lake. When they identified the specific problems and sources of pollutants, they would develop and implement a restoration plan. Returning to his concern about allowing development or disturbance on steep slopes, most places classified a steep slope as greater than 25%. He referred to scientific data and runoff on steep slopes. Trails or roads

provided a path to put the pollutants in the water. Lake Mary Ronan couldn't stand that. A lot of land around the lake was yet to be developed. He compared with Flathead County. He asked that they be given the chance to improve the water quality and recommended they delete the proposal to allow disturbance of slope greater than 25%, and add under section 2 Permitted Uses that disturbance of slope of 25% or greater was prohibited.

Rick Mayfield of Ferndale asked about a possible mitigation plan for steeper slopes rather than saying the land was unbuildable.

Jim Grant said he didn't find something like that. The bottom line was when people built on steep slopes, you took out trees and had a road that the water ran down. Natural runoff would carry nutrients. Disturbing the soil added to the nutrients. Paths to the lake sped up the process and provided another vehicle. In the places he found, they didn't allow [building on slopes greater than 25%] because of that. He talked about what people would see in the 20-foot lakeshore protection zone. The buffer strip took enforcement.

Steve commented that, like the short-term rental (STR) issue, they had a problem with slope disturbance currently because it wasn't in the current regulations at all, so the County was considering putting something in so it could be regulated. By making it a conditional use, when someone applied to disturb steep slopes to build a structure, the permit could be conditioned to mitigate some of those problems. He gave examples of mitigation.

Mike Maddy said state law required dealing with stormwater and not letting it go in the lake. His party owned 1500 acres, [which was] the whole west shore of the zoning district. The phosphorus and nitrogen problems were real but caused by the existing [home] owners. Increasing regulations on his party didn't do any good without the rest of the properties on the lake because the real problem was the existing houses. His party was the largest landowner in the zoning district and hadn't heard about this until yesterday. Zoning was created by the people in the district and this process wasn't done by them. He thought it was extremely unfair that his party wasn't noticed and didn't think it was an accident, that it should be better thought through and that his party should have input. His party didn't like how the process had come together. The process had been going on for months and no one contacted his party, who had put in an application to amend the zoning 10 years ago and never got it done, nor was it taken as input. What happened here was fairly disturbing and his party thought they should be involved in this process. He referred to the Zoning Commission. These rules were arbitrarily made by someone other than his party. His party wasn't saying other people shouldn't be involved but thought they should be involved too.

Steve noted that the Planning Board loved getting public comment. The meetings were noticed in the same way and for a lot of meetings, no one attended. The Board did their best to represent everyone in the County. The best way to be represented was to be here at the meetings. He was glad the people attending tonight were here. The record would be left open and there would be more public comment opportunities in the future. Frank said they'd talked about improving the public information. They met the legal requirements but in his opinion he thought they could do better with new technology.

Joan Folwell and her husband owned a cabin on Lake Mary Ronan since the mid-1970's. Part of the property was in the Lake Mary Ronan zone and part was not. Over 75% of the lakeshore was traditionally owned by Plum Creek and subsequently Mike Maddy. Some landowners weren't in compliance with current regulations or environmentally sound practices. Plum Creek logged that territory for maybe 100 years? There was nonpoint source pollution where a lot of the nutrients were coming in, from both the logging activities and cows out on open range. Mike Maddy had done some logging to improve his property, presumably for potential buyers. She wasn't going to say that logging added a lot of detriment to the lake but this had been an ongoing problem. That was what caused most of the pollution in the lake and that had been recognized since the late 1990's by studies done by Yellow Bay Experimental Station. She asked about conditional uses on slopes of 25% or greater and the rationale for putting language into the zoning regulations about that.

Jacob outlined that currently Lake Mary Ronan regulations prohibited building on a slope over 25%. It didn't address disturbance of a slope over 25% so currently that could be done unregulated. By putting it in as a conditional use, someone could get a conditional use to create a level area to build a home where they could live, manage their stormwater, have their septic system and so on, on a level area. Currently they could do that unregulated.

Joan F supported Jim Grant's data on the detriment of building on 25% slope or greater. Her opinion was to eliminate building on 25% or greater slopes. She recognized progress but hoped it would be in a sustainable, logical manner that considered particularly the effects in a sensitive area like Lake Mary Ronan.

Steve commented by restricting building on slopes of 25% or greater, it meant someone would need to change the slope before they built. It didn't mean they couldn't build on that lot. They could adjust the slope with an excavator and then have a building spot less than 25% and go ahead and build. By asking them to get a conditional use permit, there needed to be a public hearing where they would have to justify what they were doing and the Board of Adjustment could condition their disturbance of slope by requiring things like a better buffer, revegetation, and things to mitigate the potential damage of runoff from those bare disturbed slopes from reaching the lake. By just saying you couldn't build on steep slopes didn't mean someone couldn't come in and change the slope and then build.

Mike Maddy reminded there was a difference between the slope on a lot and on a building site. If you had a 10-acre lot, you could have a lot of 25% slope on it if your building site was less. You'd want to restrict the building site not the lot. Regarding the logging, they'd owned the property for 15 years. They logged 100% for mistletoe and to clean up the ground storage to prevent forest fires. His party was proud of their logging project, and had been commended for it. They hadn't done this for development purposes. They did it to benefit the community.

Jim Grant supported that the slope of the building site should be looked at, not the whole slope of the lot. There weren't a lot of building sites up there. [His house was] built on an old road bed on the east side. Mike Maddy had to move a road, which would leave some prime building sites on that old road bed. When you disturbed that 25% or greater slope, the scientific data was there that you'd have pollutants and nutrients run downhill, faster and more often. In 1997, when the

first Lake Mary Ronan zoning regulations came out, it said structures shall not be located on slopes which are 25% or greater. He thought the intent was to not have a home built on a slope of 25% or greater whether it was leveled or not. Most of the data he covered earlier was available in the mid-1990's and had probably been looked at.

No more public comment on Lake Mary Ronan was offered. Public comment was closed.

Wally clarified that this closed public comment for tonight but the record was open. Steve noted they would accept more public comment in the future.

SWAN SITES ZONING MAP & REGULATIONS AMENDMENTS (7:40 pm)

Jacob Feistner presented the staff report. (See attachments to minutes in the May 2019 meeting file for staff report.) He detailed the postings of the legal notice, as required by MT State law. He'd received multiple public comments. Some were in favor of some proposals and some in opposition. Some main concerns were short term rentals (STRs), accessory dwelling units (ADUs), aquatic invasive species (AIS) and lack of public noticing. He overviewed that he would talk about proposed map adjustments and then some of the proposals within the actual regulations. He added two map changes to the proposed zoning map (attachment 3). A line across Swan River was a hangover from a section line and needed to be cleaned up. Also, he'd like to include Johnson Creek on the map where it crossed the Kootenai Lodge property because Johnson Creek was where the County considered the lake ending and the river beginning. Showing Johnson Creek would help to clarify that point.

To address the zoning regulations, he went through attachment 5, where bold-faced items had been amended and was primarily new language. Language that was struck through was proposed for removal.

On pg. 1 of attachment 5, in the proposed second paragraph of item II after 'under the jurisdiction of Lake County, Jacob proposed adding another sentence: 'In the event any adjoining properties are added to parcels within the district, such annexation shall not be utilized with the intent to increase density of the surrounding parcels, whether zoned or unzoned.' A fair amount of lots had boundary line adjustments with lots outside the district so part was regulated and part was not. This would say that the regulations would apply to the whole parcel. The map wouldn't be adjusted each time but that statement said the whole parcel was subject to the zone.

Public comment opened: (7:57pm)

Denny Kellogg from Rainbow Drive said he'd submitted 3 letters, which he said were based on the April staff report. They got the current staff report on May 6, after the comment period was over on April 29. The original zoning was effective on April 5, 1994 as a citizen activated zoning district initiated by him. The covenants were created by Stoltz Land & Lumber in the early 1970's. In 1994, they had the foresight to prohibit STRs. The people protesting this bought their property with these restrictions in place. Only 2 comments favored STRs. One was from Jesse & Michelle Remington, who currently were one of two parties operating an illegal STR in Swan Sites. He reiterated his written comment about the current STRs in Swan Sites that Jacob had provided. He didn't see the need to allow and permit this. Regarding statements in

the first paragraph of #5 on pg. 5, Denny took issue with the statement that Swan Sites covenants might not have been enforced with existing STRs. They regularly sent violators registered letters. One of the purposes of codifying the covenants in 1994 was so enforcement would be done by the County. The first staff report said the County didn't have the resources to enforce on these VRBO's (vacation rental by owners). His group enforced the covenants, not the zoning regulations. ADUs and STRs were already prohibited by the covenants and would supersede zoning regulations so why put them in? The first staff report said the covenants could be more restrictive than zoning. He referred to SB 300 and said it passed the House and Senate and was waiting for the governor's signature, and this made it state law that restrictive covenants couldn't be more restrictive than a zoning regulation. He was never contacted as an owner of one of the lots with commercial potential that was mentioned in the staff report. He was a member of the Board of Directors of the Swan Sites Homeowners Association and that board wasn't notified of this even though they were the governing body for the district. He referred to items in his letter regarding legal issues, community safeguards and that they didn't want STRs.

Jeff Kemp, board president of the Swan Lakers, also had sent a letter. The organization's mission was to protect water quality in Swan Lake and the Swan River watershed. He reemphasized points from his letter regarding additional strain put on aging septic systems by STRs and ADUs and grave concerns about increased risk of introducing of AIS with people bringing boats from out of state. He and his wife were also Swan Sites residents and he echoed Denny R's comments that this would negatively change the character of their community.

John Lang and his wife bought into Swan Sites after a bad experience in Flathead County with a wedding business next door. They also had a place in a gated community designated as a STR facility in Palm Springs vicinity. Were the police departments ready to deal with the complaints that came from short term renting? In the Palm Springs area, the owner or manager had 45 minutes to respond if a complaint came in, otherwise the police showed up and the homeowner was fined. The fine went up every time something happened. He was in the security business. In Lake County, it would take hours for a response. Part of analyzing an area for STRs was your ability to respond in a timeframe. If you couldn't do that, the area wasn't ready for STRs. Based on the service available, they weren't ready for these in this area.

Robert Korechoff was speaking for him and his wife although he was the president of the Swan Sites Homeowners Association Board of Directors. He endorsed the points made by previous speakers. He mentioned the clear water, natural beauty, wildlife and low relative density as reasons people lived there. He felt the protection of the low density in the zoning was now under threat. The other 3 items had been covered by others. From his 4/26/19 letter, he reiterated contradictions he saw in the County's reasoning for the proposed STR language. He referred to Denny R's comments and 4/28/19 letter on the 8 STRs listed on a handout from Jacob, which they'd boiled down to two. He didn't think this was a situation that required a rewrite. He asked about enforceability regarding statements on sewer capacity, minimal traffic, noise, and boating rules, including no wake zone which people already ignored. He described that Jacob said these were difficult to enforce. Robert thought they were unenforceable. He asked for the data or evidence that supported the statement that permitted STRs had worked well in other districts. He found other statements questionable, pointing to the word 'appears'. He thought the use of 'should not' in the explanations related to the growth policy was meaningless. He thought

people would learn from the procedural issue after the first notice was run and that everyone would recognize there was a problem. That didn't happen. He reiterated Denny R's comments about confusion on the April versus May staff reports. He and Denny met with Jacob. He was not contacted by email about those. He could contact every person in Swan Sites by email. He asked why this wasn't done the proper way and why notices were posted instead. He was frustrated with the inability of communication and didn't think government or business should be run this way. People in Swan Sites were passionate and sincere about keeping the neighborhood as it was.

Sharon Valentine commented on the AIS issue. She lived near a boat launch available to anyone living in Swan Sites. People on vacation coming to party either would be unaware or uncaring about the AIS issues. They could bring a dirty boat. She wanted to ensure that Swan Lake remained a beautiful & pristine lake. She supported the comments made by the previous speakers.

Lynn Duerr lived next door to one of the two grandfathered STRs in Swan Sites. She wasn't going to address the points already addressed. She talked about what it was like to live next door to a STR. The owner and property management were responsible but distant. She and her husband policed the place. They'd had noise at all hours and drinking. People were disturbed a half mile to the sides and a mile across the lake. Boating issues came up and her family ended up doing inspections. They were only recently training. No one was there to explain high fire restrictions or no wake zones. Most of the visitors were receptive to talking to her and she did this as a favor for her neighbors but it wasn't her job. She wasn't willing to do it for more houses. Nothing said the owner had to live on the property and be present at all times where there were renters present. She didn't think that would be enforceable if it were put in. The police had more serious problems to deal with in terms of legalities and danger. Someone needed to supervise the rentals and make sure they weren't over capacity. They'd had 30 to 40 people in the house next door. Neither the owner nor the property management knew this. The septic system wasn't set up for that; it was set up for 6 bedrooms. The group had 2 RV's and 3 tents and that wasn't unusual. They didn't need more STRs in Swan Sites.

Fred Duerr added comments to those of his wife's. They bought 25 years ago. They had lived in Hawaii for 45 years, where he was involved with hotels. He heard and agreed that STRs were needed, but where you had the infrastructure to take care of them and service them. He gave the example of trash. Visitors came and left. The trash got picked up by the residents, on the roads, lake, river and shorelines. [He and his family] checked the boats for AIS, as some visitors brought boats. He thought it was against the law for him to inspect their boats on private property because he wasn't deputized. They'd just tell him to get lost. The visitors didn't care. They were there for only a short time. The residents and their children were subject to loud profanity that you could hear across the lake. He talked about the slow response time, with the example of a flipped jet ski with concerns that someone might have drowned. The official responders arrived after the problem was solved. The more rentals, the worse it would get.

Margaret Kuska lived two houses away from the Duerrs and three houses away from that STR [by the Duerrs]... She noticed the canal wasn't shown on the County maps. The situation on the canal was different. It was built in the 1970's. Fast boats and wading or playing children caused

the silt to rise and the water to become murky. This was a huge zoning change for them. It was unconscionable to not announce the meetings well. She mentioned rental properties that would have second homes and small cabins (or whatever) built. Most lots in Swan Sites were approximately an acre, maybe 70 feet wide and 400 feet long. It was hard to get a well and a septic on that and not be right next to your neighbor's well and septic. Very few lots could take another building and another septic.

Bob Sleight sent a letter. He noted Denny mentioned there were very few illegal STRs [in Swan Sites]. For the one that required 30 days, the website contained a number of comments from past renters that praised the owners for a wonderful vacation of 1 or 2 weeks. The fact you couldn't regulate an illegal use was not a reason to permit it. His family members were AIS inspectors. They lived there for over 25 years. They checked the regulations prior to purchasing to see it was protected. One new proposal was to put [an address number] to identify a property. How would they enforce that? He'd gotten letters about pulling his dock out in the past so apparently that wasn't a problem. He was from Woodstock and served on the zoning board of appeals there for 11 years and for 750 cases. The number of STR problems they had was unbelievable. He was vigorously opposed to STRs. It was preposterous to say it wouldn't change the character of the neighborhood. He said no to STRs, and not to change the density.

Denny Kellogg asked if STRs were residential or commercial use. Wally said that wasn't clear. The problem for the courts was at what point was renting a house commercial? No one had a clear definition yet. Denny K said it was commercial in Kentucky.

Rick Mayfield of Morning View Drive said they'd already seen what happened with a river access directly across from that drive. Sheriff deputies were there almost every weekend day. People there didn't care about the roadways, signs, no parking [areas], trash or safety issues. Kids ran out from between cars. STRs would bring in [more] people who were there to have fun and didn't care about rules. Alcohol was involved, and the more alcohol, the less the rules applied. He supported the comments of the previous speakers and not having STRs.

Maureen Kemp said nothing was broken so it didn't need to be fixed. She didn't understand why you'd want to add STRs and [inaudible] dwellings. She didn't think the district asked for this. She supported the comments that she'd heard.

Lynn Duerr asked where this idea came from. Did people in Swan Sites request this change? Steve R explained that there were many years of zoning districts that should have been updated and weren't. They were trying to go through to update and correct the districts. Staff were trying to be proactive with issues that were in the news in other areas. He appreciated the public's comments. He personally didn't want STRs in his area either. The problem was something like the drug war. There was a huge demand for STRs here. It was happening without regulation in places. Trying to decide the best way to manage it was very difficult. Lynn Duerr thought they just dealt with the people who did it.

Frank M said they'd had property on Finley Point for about 49 years. A neighbor did STRs. He hated it except when his son rented it. An issue was high taxes and living expenses and low income. People tried to cling to their property. Renting was a viable option. It came up here as

they tried to standardize the zoning regulations. Each district had different rules and it was difficult to keep track of them. There was a need to standardize as much as possible. He thought he'd vote against STRs, having had firsthand experience. He was in favor of ADUs and didn't think they'd be a terrible impact.

Lynn D thought long term rentals were different.

John Lang talked about proposition #13 in California, where people had difficulty staying in the homes they'd been in for years because values and taxes went up so much. There were other ways to look at it, such as other ways of taxation (sales tax or whatever). Proposition 13 might be something to talk about within this state, which was aging.

Fred Duerr said the problem was the rising taxes were what drove the old people away from the lake. He talked about places that had STRs, such as a condo that was zoned for it or a house that was permitted for renting. When people started to rent in neighborhoods, parking was limited. You'd get 6 couples parking in the street for a STR, blocking traffic. He suggested checking the situation in HI, which was acrimonious.

Sharon Valentine talked about she and her husband's search for a retirement home, beginning in 1994, from southern CA. They shouldn't change Swan Sites just to conform with everyone else. This would change their quality of life. A lot of them were retirees. They wanted to live out their lives where they were. She thought STRs would ruin this.

Steve hoped that if they didn't put STRs in the zoning districts that they could prevent unregulated STRs from coming in. He compared to Flathead County, where they had a lot of illegal STRs and were now trying to react by regulating them. He was concerned that if they waited to regulate, more would be grandfathered in. The public attendees disagreed with him. He hoped they were right.

Robert Korechoff said he personally dealt with both of the [grandfathered] STRs. Both provided ample documentation that they were doing this prior to the regulations going into effect in July 1994.

Sharon Valentine said people buying the property should be aware of the covenants and regulations before purchasing.

Denny Kellogg said some people thought ADUs would be a good thing. Their covenants already precluded it. So why put it in the zoning?

Denise Lang bought in Swan Sites for the two layers of restrictions: the zoning and the covenants. She was a realtor in the area, and sold property in that area based on those restrictions. People were looking for the quiet enjoyment of their property as protected under the MT Constitution. It was unconscionable to her to add STRs to standardize zoning districts. That turned neighbor against neighbor for enforcement.

Denny Kellogg agreed with Denise Lang. He mentioned the high water table and groundwater and septic. He thought the unique character of the neighborhood was being denied.

An unidentified person asked to be informed well in advance for all future hearings through specific individuals. [Editor's note: Legal notices are available at <https://www.lakemt.gov/planning/legal.html> roughly 3 weeks before a meeting, as has been the case for many years.] Another unidentified person said they also needed to be informed not just of meetings, but of changes to the staff report. [Editor's note: Staff reports are available a week in advance of a meeting via a link at <https://www.lakemt.gov/planning/planning.html> beginning this year.]

Public comment closed.

Steve noted they were leaving the record open and that there would be opportunities for public comment in the future. The Planning Board met the 2nd Wednesday of every month provided they had things to work on. That information was on the County website.

Jacob responded to some comments that were made. It was nice that so many people showed up and said how they felt, and to see a neighborhood that got along. Sometimes when people were passionate about something, things were said that weren't exactly accurate. He met with Robert Korechoff and Denny Kellogg on April 26, as they mentioned. He did say that enforcement was difficult and he stood by that. He informed them at the end of that meeting about the meeting today, that there would be a new staff report, and gave them the website where they could find that staff report. The fact they claimed they were not notified was a false statement. He watched them both write it down before they left. The County could undoubtedly do better but they had made efforts to inform. He called Denny on Monday to make sure he'd seen the new staff report before the meeting, and asked Denny if he should send it to the HOA (homeowners association). Denny had said he didn't need to do that, so Jacob didn't send it to the HOA. When you made statements accusing the Planning Dept. of these things, you needed to give the whole story. People were passionate and Jacob admired that passion. He wasn't trying to ruin their world. He wanted both sides of the story to be told. He made time on April 26 to talk as long as [Denny and Robert] wanted to talk about these issues. He informed them what was coming up. He wanted that to be clear in the record.

As Wally pointed out, whether or not these uses were commercial depended on who you asked. One Supreme Court said that they were commercial. Jacob had read other Supreme Courts' decisions that said they were not commercial. This was an issue with two sides.

Jacob noted that upcoming reports were released to the public 1 week before the meeting, as they always have been. This report was out last week. Next month's report would be out one week before the meeting. That was how Lake County had always operated, so they could gather the public comment and incorporate it into the report before the report was produced.

When Jacob told Denny about these vacation rentals, Denny said enforcement was no big issue. All you had to do was to go talk to people. Jacob thought that was a really nice idea and wished that was how it worked. However, from an hour away, he couldn't do that. The homeowners

could. [Denny] had made the point that the County couldn't enforce things but the HOA could. Jacob thought that was the best point made tonight. The HOA should be responsible for enforcing these and the County should not because clearly the County could not do it. That was an excellent point that they should pursue.

Jacob also questioned the percentage of people here tonight that represent Swan Sites Zoning District, of approximately 300 lots. He counted approximately 10 couples or 11 property owners here tonight, which was 3%. That was a low percentage of the overall. He estimated that he received about 20 letters, 3 of which were for it. What they'd found was when people were in favor of a proposal, they didn't speak up because they liked what was happening. People spoke up when they were in opposition to it. It was easy to identify how many were opposed to this but hard to identify who was in favor. It had been the same story with the Density Map repeal. A concern had arisen about the ADUs and the density changing. Nobody was proposing a change in density. On a property where an ADU would be possible, that same property could subdivide and have more impact than an ADU would create. They weren't talking about additional density. The density already allowed for it. The ADU would be reviewed as a permitted use. Those were the main things that stood out to him [from tonight's discussion]. If something was on the record, they needed to hear both sides. He appreciated the attending public as a community, that they came together, and were in agreement and working together. He wished more communities were doing that.

Robert Korechoff said what got them upset in terms of notification was that the written response was required before the new staff report came out. If the new version had lots of changes, their letters would look ridiculous and they wouldn't be able to address the new points. He appreciated the fact that there was a week prior to the meeting where the new documents were made public. To limit the written input before those documents were made public didn't make sense to him. Jacob appreciated that but they had to give the public opportunity to comment before they could write their report. They were limited on time. They tried to get them out a week ahead of time so you had a week to study them. Steve added they had public comment period during the meeting so people could comment orally. Robert said that wasn't as effective as written comment. Steve noted the oral comment went into the minutes.

Fred Duerr said Lake County was unique and communication was important. There was no reason that the County couldn't deal with each one of them individually. They didn't get the paper for public notices and the paper wasn't available in their area. He thought it was important to keep the lines of communication open. They were at a disadvantage where they lived.

Steve said the other side of the Mission Mountains was closer to Missoula County and Flathead County in terms of driving. He understood it was a problem over there. The state rules were written when people read newspapers. He thought it was time to hire someone to do public notice on Facebook. They recognized these were weaknesses. Everyone was trying to improve. Frank asked if people in general were willing to release their emails to the County. It seemed like the County could get word out by email at low expense. Members of the public wanted to be contacted through the Swan Sites Homeowners Association. Steve asked Jacob if, in this case in the future, he could include getting in touch with Bob Korechoff. Jacob said he would be happy to, if Bob K provided Jacob with the email he wanted used.

The Board moved on to board discussion.

Steve: pg. 5, 10.f: change 'require' to 'have'.

Pg. 5, V, 3rd line of the bolded paragraph: Remove 'the' from 'the complies'.

Pg. 5, V, 5th line: Change 'rent of lease' to 'lease or rent'.

Steve asked about the lots available for ADU's. Jacob said the things in orange potentially could have an ADU unless it had already been subdivided. Those that had been subdivided already couldn't have an ADU. He pointed out various lots and gave more detail. He clarified there were no waterfront lots included. He clarified further for Frank that an ADU was a density unit. Most regulations in Swan Sites read that the lot could be divided once so it could have 2 dwelling units. If they didn't divide, an ADU could be allowed. If they divided, one of those units would have to be on each lot. This was in the zoning. He'd indicated the lots that could be divided one time.

Pg. 7, E: In the 3rd line, change 'ends' to 'end'.

Pg. 8, VII.a: Put a limit on the number of people, maybe 3 or 4 people per bedroom.

On pg. 9 regarding public notice, Steve asked about the timing for the public notices with regard to other permits. Jacob replied they usually informed the applicants of the process as soon as some sort of application came in. The applicants could move forward with other permits if they wanted to or hold back to see if they could get zoning and to see if it was worth doing the other ones. A permit would not be issued until the other things were addressed but Planning could give them the green light to have the septic looked at and get state approval.

David returned to the residential/commercial use question for STRs. He thought it wouldn't be a commercial use if it was in an accessory unit and the homeowner was living on the property and managing it. If they were relying on a property manager, it would be more commercial. A truly owner-occupied and managed property would qualify for a permit. Steve talked about the conditional use included for bed and breakfasts (B&Bs), where multiple rooms were rented to different people. B&Bs were listed as a home occupation business. Jacob thought Dave was comparing an Airbnb versus a VRBO (vacation rental by owner). With an Airbnb, a person rented out part of their house where with a VRBO, they rented out the whole property. They operated similarly but the conditions on the property were slightly different. Frank referred to regulations that said you couldn't rent out just part of the property. Jacob said unless they had the density, in which case the planners looked at it more like an ADU they could rent out as a vacation rental or B & B. [Otherwise], you'd have to rent the whole property to your renter and leave the site. A lot of people did that. Wally talked about loopholes. Jacob said that currently in the STR definition, it included VRBO, Airbnb and Homeaway as examples. Currently the regulation was written to include those as STRs so they would be treated the same from that standpoint.

Jacob was glad to work on STRs so they could get language that fit. He wondered what the alternative was, if the Board did not recommend STRs in Swan Site. The HOA seemed good at enforcing, and it was in their covenants, so [the zoning] could remain silent on it in. The covenants, which were written first, said the properties had to be explicitly used for [private] residential purposes. There couldn't be businesses on the properties. It didn't specifically say no STRs or no rentals less than 30 days but they enforced it through their covenant language. The

County couldn't enforce it so why have it in the regulations? The HOA was passionate about enforcement and had the ability to do it. It could be taken entirely out. Steve thought they could meet the growth policy if they didn't push STRs and ADUs in every zoning district. If they had to vote tonight, he'd find it difficult with the STRs in there.

Sigurd thought they could leave it alone and let the covenants take care of it. Jacob noted if the prohibition was left in the zoning, the County would be obligated to deal with it. David said the purpose was to release the County from liability. Jacob said they could leave out the section that permitted it but also take out the part that prohibited it. It would be entirely on the HOA to enforce. Wally and Steve touched on Senate Bill 300 (SB 300), on which more information was needed. Wally gave more information on court cases and STRs as commercial versus residential, and exclusionary zoning. He warned of slippery slopes where people tried to eliminate non-STR renters. They didn't want to go there. More discussion ensued.

Steve and Abigail confirmed they would entertain the idea of leaving out STRs if it was in the next staff report. David asked if it spoke to the liability issue they were trying to achieve. Jacob responded that it would take enforcement off of the County. People notified the County about these, but staff lacked the ability to go over there and monitor to prove they were actually operating, so they couldn't do anything about it. Then they weren't enforcing the regulations they were obligated to enforce. Steve said he might be affected by the situation with SB 300 and what it said. If it said the covenants couldn't be more restrictive than the zoning, it would affect all of the subdivisions in unzoned areas. Wally talked more about problems with it.

Steve: Pg. 11, Lake Access.D: Add 'with erosion control mix' after 'mulched'.

Pg. 12, item B: Add 'these regulations and' after 'under'.

Pg. 12, Long-Term Maintenance: Specify the erosion control mix with mulching.

Pg. 12, IX.C: Reword the portion in the parenthesis to read '(the area of the roof including eaves and overhangs, attached decking, and paved driveways and walkways)'.

Pg. 12, IX.C: Add 'management' after 'stormwater'.

Pg. 12, IX.D, in first line: Add 'management' after 'stormwater'.

Pg. 18, XII.B: Add 'on the same property' after 'must live'.

Pg. 18, XII.B: Add 'one of' after 'either the house'.

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With pg. 18, XII.D, Steve had two concerns. He suggested taking 4 measurements for a more accurate average, as in the Upper West Shore zoning district, rather than just 2. It would be harder to describe but it would be more difficult to play games with it. He asked for clarification of the measurement if an extension was greater than 5 feet from a structure. Jacob clarified with the example of a 5-foot deck extension where the eave extended 2 feet. You would go by the dripline of the deck. This was for building height and finding the grade to use for the estimate. If the deck was added later, most likely this wouldn't be looked at.

Pg. 18, XII.D: After 'beyond 5 feet from the structure' replace 'it' with ', its drip line'.

Pg. 19, item I: Change the last word from 'proposal' to 'proposed use'.

Discussion ensued over whether the prime concern [with temporary buildings] was visual or abuse of the 6 month usage and density of dwellings. Steve asked how permitting for a second 14-day period started. Jacob said that wasn't defined yet. It appeared in Lake Mary Ronan and

City County zoning districts. Regarding 6 month usage and then 30 days out of sight, Sigurd thought you should be able to leave it with 30 days unoccupied and not have to move it. Steve agreed it wasn't fair if someone could store it year-round but the other person had to remove it to store it unoccupied for 30 days. Jacob noted this was another one where they couldn't enforce it.

Pg. 19, DD: Change 'out of site' (or 'out of sight') in the last sentence to 'unoccupied'.

Frank wasn't sure they'd heard from a cross-section of homeowners on STRs. He personally wouldn't want a vacation rental next door. David said they bought in with covenants to which they agreed. The homeowners could change those with a certain percentage voting to do so. He heard a concern today that this would create a division in the community, so he thought some were in favor. Jacob mentioned that they appeared to have one HOA but they had 5 separate covenant documents. Wally said these could decide to go in their own directions.

MINUTES: APRIL 10, 2019 (10:02 pm)

Abigail and Frank excused themselves since they were not at the April meeting.

On pg. 2, Steve changed 'want to government' to 'want government'

Motion by David Passieri, and seconded by Sigurd Jensen, to approve the April 10, 2019 meeting minutes as amended. Motion carried, 4 in favor (Steve Rosso, John Fleming, Sigurd Jensen, David Passieri) and 2 abstentions (Abigail Feiler, Frank Mutch).

OTHER BUSINESS

None.

Steve Rosso, chair, adjourned the meeting at 10:04 pm.

[Editor's note regarding notice:

Regardless of the entity or the technology employed, you generally have to take the responsibility to check for governmental notices, regardless of whether it's in the newspaper or on the web. Most complaints about notice touch on this. The posted signs, which tend to be very effective and more direct, met with scorn in this case even though they were most effective. Regarding email, a functional, consistent and maintained database of County landowner emails does not exist, so this would be unreliable and expensive.]